IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.13172 of 1999

Between:

K. Suryanarayana Rao S/o Madhava Rao.,
R/o Kothagudem, Khammam District.

..... PETITIONER

AND

1 Govt. of A.P. Labour Employment,

Training and Factories (Lab-I) Dept. rep.by its Secretary,
Secretariat, Hyderabad.

2 The Depot Manager, APSRTC,
Madhira Depot, Khammam Dist.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.13172 of 1999

ORAL ORDER:

This Writ Petition is filed by the workman being aggrieved by the Award dated 26-11-1998 in I.D.No.80 of 1997 on the file of the Industrial Tribunal-cum-Labour Court, Warangal insofar as denying the other benefits while reinstating him as a fresh Conductor is concerned.

It is the case of the petitioner that he was appointed as a Conductor in the respondent-Corporation in the year 1976. While so, he fell sick and absented for duties from 22-5-1991 to 14-6-1991. In fact, he submitted a medical certificate. But, without taking the same into consideration, as per the report of the supervising staff a charge sheet dated 26-11-1991 was issued to him. He submitted a detailed explanation stating that he suddenly fell ill and in fact, he submitted a medical certificate and the same may be taken into consideration. However, without providing any opportunity to him, an *ex parte* enquiry was conducted and the Enquiry Officer seems to have submitted a report holding him guilty of the charges. On the basis of the Enquiry Officer's report, the disciplinary authority issued a show cause notice and after complying with the formalities, he was removed from service. Aggrieved by the same, he filed an appeal unsuccessfully. Having no other option, he filed a claim petition under Section 2-A(2) of the Industrial Disputes Act,1947 (for short 'the Act') and the same was taken on file as I.D.No.80 of 1997 by the Industrial Tribunal-cum-Labour Court, Warangal. The Tribunal, after considering the facts and circumstances of the case, held that the punishment of removal from service is harsh and disproportionate to that of the misconduct proved, but granted only the relief of fresh appointment denying all other benefits including the service rendered by him from 1976 till the date of reinstatement. Hence, this Writ Petition.

Learned counsel for the respondent-Corporation, though no counter affidavit is filed, strenuously contended that the petitioner's past conduct is not clean. Even for a similar misconduct of absenteeism earlier his services were terminated. However, the Labour Court directed him to be reinstated into service with full back wages.

Though the petitioner was reinstated into service, he is in the habit of absenting intermittently without leave in the guise of sickness. In fact, in the present misconduct also he repeated the same absenteeism from 22-5-1991 to 14-6-1991 and even thereafter he had not improved his conduct; therefore, another charge dated 26-11-1991 was also framed alleging he is having irregular attendance by way of absent/sick/leave frequently resulting in dislocation of service. The Labour Court itself has taken a lenient view of the matter and no further relief can be granted while exercising the extra-ordinary jurisdiction of this Court

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the entire material made available on record including the impugned Award.

At the outset, I am of the opinion that the Labour Court rightly held that the charges framed against the petitioner were proved and this finding of fact does not require interference of this Court. However, in the counter affidavit filed before the Labour Court except saying that the petitioner was removed from service once, which was a subject matter of I.D.No.54 of 1989 under which the petitioner was reinstated with continuity of service and full back wages, there is no other allegation made against the petitioner. The petitioner, in this case, has categorically stated that he fell sick and produced a Medical Certificate, but that was not properly considered. In his explanation, he has stated that as he is suffering from Ulcer disease, he was reporting sick frequently and he was submitting sick certificates in advance for the same period and later he was unable to attend the duties and he was extending sick leave from time to time and such extension period was also treated as absence and that since he was suffering from ill-health, he could not attend duties and he has also filed medical certificates. The Medical certificates were countersigned by the Civil Assistant Surgeon of Madhira Government Hospital. Of course, this Medical Certificate would cover only part of the absent period. Under those circumstances, the Labour court rightly held that the charges framed against the petitioner were proved in full. However, the Labour Court while holding that the punishment of removal from service was disproportionate to that of the misconduct proved, held that the petitioner shall be reinstated as a Conductor afresh. Though the petitioner earlier suffered one punishment in the hands of the management, the same was due to the sickness and absenteeism for a short period of less than 20 days. Since this is not a case of cash and ticket irregularities nor any other grave misconduct, the

Labour Court ought to have considered granting of continuity of service rendered by him from 1976 to 1992 at least for the purpose of seniority and retiral benefits. Denying such a long service for the purpose of promotion and retiral benefits would certainly be a very harsh punishment. The petitioner is appointed only as a Fresh Conductor after more than 23 years from the date of his appointment as per the Award. Therefore, I am of the opinion that the Labour Court has not properly exercised the powers vested in it under Section 11-A of the Act while granting the relief after holding that the punishment is disproportionate to that of the misconduct alleged. Therefore, the Award of the Labour Court is liable to be modified and accordingly modified.

In the result, the petitioner-workman is entitled for being reinstated as a Conductor with continuity of service from 1976 till 31-10-1992 for the purpose of seniority and other benefits. However, he is not entitled for the service rendered between 1-11-1992 and 15-3-1999 for the purpose of seniority, back wages and other benefits. The said period shall be counted only for the purpose of retiral benefits and the petitioner is not entitled for any back wages or other attendant benefits.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

28-7-2005

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